

Recent reforms: effects of bankruptcy on contracts¹

The recently enacted L. 4738/2020 on “*Debt settlement and second chance providence*”² (the “**Insolvency Code**”) has been amended lately, *inter alia*, by L. 4818/2021. The amending law introduced various changes on the Insolvency Code’s articles relevant to the effects of bankruptcy on contracts (art. 103-111 of the Insolvency Code).

Under the current legal framework, the effects of bankruptcy on contracts depend directly on the court decision declaring the bankruptcy since the relevant provisions of the Insolvency Code reserve different treatment if the liquidation of the debtor’s assets is substantiated, according to the relevant court decision, (a) on an *itemised basis* or (b) through the sale of *all company’s assets as an operating group*. In particular:

A. Liquidation of assets on an itemised basis

The liquidation of the debtor’s assets on an *itemised basis* causes the automatic³ and harmless⁴ termination of the debtor’s agreements⁵ on the 60th day from the declaration of bankruptcy, unless the bankruptcy trustee within such 60-day period declares in writing to the debtor’s counterparty that he/she chooses to immediately terminate or continue such agreement(s) (“*right of choice*”).

¹ Government Gazette, issue A’, no. 124/18.07.2021.

² Government Gazette, issue A’, no. 207/27.10.2020.

³ Meaning that no action is required.

⁴ E.g. no compensation or penalty contractually agreed due to the termination of the contract.

⁵ Including employment contracts.

B. Liquidation of all company’s assets as an operating group

Agreements⁶ in force at the time of the declaration of bankruptcy where the court decision declaring the bankruptcy provides for the sale of all company’s assets or its individual operating groups, remain in force and are not affected by the bankruptcy, unless the bankruptcy trustee declares in writing to the debtor’s counterparty that he/she chooses to immediately terminate or continue such agreement(s). However, within 30 days from the declaration of bankruptcy, the debtor’s counterparty may set a reasonable deadline to the trustee, within which the trustee is called to exercise the aforementioned right of choice.

C. Exceptions

The above do not apply and immediate termination of a contract occurs in the following cases:

- if this is provided by special legislative provision;
- if the contract is of a “personal nature”;
- if the contract provides for a termination right in case of the counterparty’s bankruptcy; to be noted that clauses re: automatic termination are not valid and considered *ex lege* as null and void. By way of exception, the aforementioned rule is not applicable and hence no termination right is acknowledged (even if this provided in the contract) in cases of (i) filing of a bankruptcy application to be performed through the liquidation of all company’s assets as an operating group, (ii) the acceptance of the aforementioned

⁶ Including employment contracts.

bankruptcy application, (iii) filing of application for precautionary measures under art. 86 of the Insolvency Code, (iv) the acceptance of the aforementioned application and to the extent this is harmful for the bankrupt debtor; and

d. if the contract is of a financial nature and it provides (or the relevant applicable law provides) for a termination right in case of the counterparty's bankruptcy.

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